IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Criminal Jail Appeal No. 291 of 2003

1. Shivraj Singh son of Kushal Singh
2. Kushal Singh S/o Harisharan

Both resident of Village Naakuri
P.S. Uttarkashi, Uttaranchal

…… Appellants.

Versus

The State of Uttaranchal …….. Respondent

Mr. B.B. Sharma, Advocate Amicus curiae for the appellants.
Mr. Amit Bhatt. Government Advocate assisted by
Mr. Rajeev Mohan, Brief Holder for the respondent-State.

Date of decision: 29th March, 2005

For the approval of:

Hon'ble Mr. Justice Irshad Hussain
Hon'ble Mr. Justice Prafulla C. Pant

- Whether the order/judgment should be sent to The reporters for reporting (Yes)

- Whether the reporters be allowed to see the judgment? (Yes)

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Coram : **Hon'ble Irshad Hussain, J.**
Hon'ble Prafulla C. Pant, J.

Dt: 29 March, 2005.

[Per Hon'ble Prafula C. Pant, J.]

This appeal, filed under Section 374 of the Code of Criminal Procedure, 1973, is directed against the judgment and order dated 22.08.2003 passed by, learned Sessions Judge, Uttarkashi in Sessions trial No. 07 of 2002 whereby, appellants Shivraj Singh and Kushal Singh have been convicted under Section 302 read with Section 34 of the Indian Penal Code, 1860 (for brevity hereinafter the Code) and each one is sentenced to life imprisonment and fine of Rs. 5,000/- and in default of payment of which they shall further undergo six months imprisonment. Kushal Singh is further convicted under Section 307 of the Code and sentenced for seven years rigorous imprisonment and fine of Rs. 2000/- in default of payment of which he shall undergo two months further imprisonment.

2) The prosecution story, in brief is that on 28.05.2002 at about 1:30 A.M. (night) informant, Rajpal Singh (P.W. 3) on hearing cries from the house of his neigbour Shivraj Singh (appellant) rushed towards his house and saw that appellant Shivraj Singh was assaulting his sister-in-law (his elder brother's wife) Pingla Devi with a sickle. Meanwhile, P.W.1, Kamla Devi (injured) also reached on the spot and tried to intervene to stop Shivraj Singh on which Kushal Singh (another appellant) and father of Shivraj Singh caused injuries to Kamla Devi (P.W. 1) with a sickle. The informant, Rajpal Singh (P.W. 3) further saw that when appellant Shivraj Singh was assaulting Pingla Devi, his father Kushal Singh was instigating him to kill her. Smt. Pingla Devi died of the injuries. Informant- Rajpal Singh, on the same day i.e. 28.05.2002 wrote a First Information Repjort (Ext. A. 1) and lodged it with the police station Uttarkashi at about 4:00 A.M. Constable Naveen Chand (P.W. 8) prepared a check report (Ext. A. 6) and made the entry at serial number 6 on 28.05.2002 in the general diary (extract of which is Ext. A. 7). The First Information Report was registered as crime number 49 of 2002 against both the appellants namely, Shivraj Singh and his father Kushal Singh under section 302, 307, 120-B of the Indian Penal Code. The crime was investigated by senior Sub Inspector, Budhi Lal (P.W. 9) who after recording the statements of Naveen Chand (P.W. 8) and that of Rajpal Singh (P.W. 3) under Section 161 of the Code, proceeded to the place of occurrence in village Naakuri where he prepared inquest report (Ext. A. 2) of the dead body of Pingla Devi and got it sealed and also prepared the challan of dead body (Ext. A. 9). He also got prepared letter (Ext. A. 10) to Chief Medical Officer, Uttarkashi for autopsy of the dead body. The Investigating Officer collected the blood-stained soil and prepared the memo (Ext. A. 3). He also prepared site plan (Ext. A. 12). After the arrest of appellants Shivraj Singh and

Kushal Singh, he recovered the heavy sickle used in the crime at the instance of the appellant Shivraj Singh on the same day i.e. 28.05.2002 and got prepared the recovery memo (Ext. A. 4). Site plan of place of recovery (Ext. A. 13) was also got prepared by the Investigating Officer.

3) The autopsy was conducted on 28.05.2002 at about 12:30 P.M. by the team of Doctors headed by Dr. K.S. Mehta (P.W. 6) with Dr. A.K. Chauhan and Dr. B.S. Bisht on the body of the deceased Pingla Devi which was brought to them by Constable Harish Chand, Constable Sahid Ali and R.G. Pradeep Singh. On autopsy the team of Doctors recorded in the postmortem report (Ext. A. 6) that it was a lean and thin built female body. The colour of the body was pale. Eyes were closed, mouth partially opened. Rigor mortis was found present in al limbs and neck. Doctors recorded following ante mortem injuries on the person of the deceased :-

i) Multiple incised wound over back of skull extending from 3 cm back of right ear to anterior of left ear. Total No. 8 interconnecting to each other; all are bone deep cutting skull bones into multiple pieces. Area size 21 cm X 10 cm. Margins sharp. Bone incised right side fractured into pieces. Brain incised into multiple pieces and protruding through wounds. Clotted blood present.

ii) Incised wound above buttock left side bone deep size 6 cm X 2.5 cm.

iii) Incised wound over right buttock, oblique 4 cm X 2 cm muscle deep.

iv) 2 incised wounds over central area of skull size 8 cm X 5 cm X 1 cm interconnecting.

v) A penetrating wound right axilla circular dimension 2 ½ cm X 1 cm lung deep.

On internal examination multiple incised bones and fractured occipital pevital and temporal bones found. Membranes were found incised with fractures. Brain was found cut into multiple pieces in the right lung penetrating would was found. Liver was pale weighing about 1100 gms. Kidney was also found pale weighing 180 gms. Death according to Doctors has taken place about 12 hours back. As to the cause of death the team of doctors recorded it to be shock and hemorrhage as a result of ante mortem injuries.

4) From the medical report (Ext. A. 5) read with the statement of P.W. 5, Doctor B.S. Rawat it is clear that Kamla Devi (P.W. 1) was also medically examined on 28.05.2002 itself at about 6:45 A.M. and on her person following injury was found:-

> ***An incised wound on right tentoro parietal region measuring 4 X .8 cms. Skin deep. 5 cm above right ear lobe. Oozing fresh blood. Placed vertically sharp cutting margins.***

Nature of injury was simple and appeared to have been caused by some sharp object. Duration of injury was fresh at the time of medical examination.

5) The Investigation Officer (P.W. 9) after recording the statement of the witnesses, spot inspection, getting autopsy done on the dead body, medical examination of the injured witness as narrated above, submitted the charge sheet (Ext. A. 14) before the concerned Magistrate against both the accused (appellants) namely, Shivraj Singh and Kushal Singh. The learned

Magistrate after giving the necessary copies to the accused (appellants) committed the case to the court of Sessions for trial. Learned Sessions Judge, Uttarkashi, after hearing, framed charge against both the accused (appellants) namely, Kushal Singh and Shivraj Singh for the offence punishable under Section 302 read with Section 34 and under Section 307 read with Section 34 of the Indian Penal Code, 1860. Both the accused (appellants) denied the charge and claimed to be tried. Learned Sessions Judge recorded the statement of nine witnesses produced by the prosecution namely, P.W. 1, Smt. Kamla Devi (injured); P.W. 2 Smt. Sundari Devi (eyes witness); P.W. 3, Rajpal Singh (informant and eye witness); P.W. 4, Rakesh Singh (witness of the inquest report and the recovery of the weapon of assault); P.W. 5, Dr. B.S. Rawat (who examined the injury of Kamla Devi); P.W.6, Dr. K.S. Mehta (who headed the team of Doctors in performing the postmortem examination on the dead body of deceased Pingla Devi); P.W. 7, Sub Inspector Chotte Lal (who is witness of the collection of the blood stained soil and recovery of the weapon of assault); P.W. 8, Constable Naveen Chand (who prepared the check report to First Information Report) and P.W. 9, Senior Sub Inspector Budhi Lal (who investigated the crime). The evidence adduced on behalf of the prosecution was put to the accused (appellants) under Section 313 of the Code, who alleged that the prosecution evidence was false. No evidence was adduced on behalf of the defence.

6) After hearing the prosecution and the defence, learned Sessions Judge found both the accused (appellants) Shivraj Singh and Kushal Singh guilty of the charge punishable under Section 302 read with Section 34 of the Indian Penal Code and further found accused (appellant) Kushal Singh guilty of also of the charge punishable under Section 307 of the Code. And, after hearing the accused-convicts on the point of punishment,

sentenced to each of the appellant under section 302 read with Section 34 of the I.P.C. to life imprisonment and also a fine of Rs. 5,000/- and in default of payment of which further six months imprisonment. The accused-convict Kushal Singh (appellant No. 2) was further sentenced under Section 307 of the I.P.C. to seven years rigorous imprisonment and a fine of Rs. 2,000/- in default of payment of which further two months imprisonment. Aggrieved by the said judgment and order dated 22.08.2003 passed by learned Sessions Judge, Uttarkashi, this appeal has been preferred (Accused Shivraj Singh stood acquitted from charge under Section 307 read with Section 34 of the I.P.C.).

7) We heard learned amicus curiae, counsel for the appellants and learned Assistant Government Advocate at length and perused the entire evidence on record.

8) From the ante mortem injuries found on the body of Smt. Pingla Devi (deceased) as narrated above, undoubtedly, it is a case of brutal murder. From the evidence on record, particularly, from the statement of Sundari Devi (P.W.2.) it is established that the appellants, deceased and injured used to live in common house in separate rooms. Appellant Kushal Singh is brother of husband of Sundari Devi. Pingla Devi is the wife of the elder son of appellant Kushal Singh. Appellant Shivraj Singh is son of appellant Kushal Singh. P.W. 1, Kamla Devi (injured) has stated that Shivraj Singh is her real brother-in-law (husband’s younger brother). From the evidence of both the witnesses i.e. P.W. 1, Kamla Devi and P.W. 2, Sundari Devi, as mentioned above, it comes out that al of them were living in a single house in separate rooms and have common verandah, which is also explicit from the site plan (Ext. A. 12). Sundari Devi (P.W.2) who is resident of same house has stated on oath that appellant

Shivraj Singh got opened the door of the room of Pingla Devi (deceased) dragged her in the verandah, on which she cried. Hearing her cry, Smt. Kamla Devi (injured) came out of her room to save Pingla Devi but appellant Shivraj Singh struck blows with sickle over the head of Pingla Devi several times. When Kamla Devi (P.W. 1) intervened, appellant Kushal Singh, who is father of Shivraj Singh assaulted and caused injuries with the sickle on the person of Kamla Devi. She has further stated that there was electric light in the house. This witness while narrating the prosecution story in her cross examination has explained that earlier at about 11:00 P.M. i.e. before the occurrence of murder of Pingla Devi after midnight, appellant Kushal Singh had a quarrel with Pingla Devi, as they had dispute relating to land and property between them. The statement of P.W. 1, Kamla Devi, who herself was injured also corroborate the entire prosecution story. She has also stated that there was property dispute between appellants and Pingla Devi (deceased). This witness too has stated that in the common verandah of their house at about 1:30 A.M. (night) when she heard shrieks of Pingla Devi, she came out of her room and saw that appellant Shivraj Singh with the **'THAMALA'** was hitting at her head (word 'THAMALA' or 'PATAL' means a heavy sickle). She has also stated when she intervened, appellant Kushal Singh took the sickle from appellant Shivraj Singh and gave a blow with sickle on her person also. Rajpal Singh (P.W. 3) who is informant and neighbour of the appellants has also corroborated the prosecution story what he saw after reaching at the scene of occurrence on hearing the noise in the house of the appellant.

9) The first submission on behalf of the appellants made before us is that, no specific role was assigned to Kushal Singh as is apparent from the First Information Report (Ext. A. 1) except that he was present at the scene of occurrence. While

mentioning the presence of appellant Kushal Singh at the scene of occurrence with appellant Shivraj Singh, it has been categorically mentioned in the First Information Report that both of them jointly have committed murder of Pingla Devi. This Court, while appreciating the evidence cannot ignore the fact that the First Information Report was lodged by a neighbour (P.W. 3) Rajpal Singh, who reached on the scene after hearing cries from the house of the appellants. As such the detailed eye account given by P.W. 1, Kamla Devi (injured) and P.W. 2, Sundari Devi (eye witness) cannot be expected from P.W. 3, Rajpal Singh who appears to have reached at the scene of occurrence from a neighbouring house. Rajpal Singh (P.W. 3) in his statement has made it clear that while appellant Shivraj Singh was hitting with a sickle over the head of Pingla Devi (deceased), Kushal Singh was saying "शिवराज! पिंगला देवी को मार कर ख्त्म कर दो ".

This sentence read with the evidence adduced by the injured P.W. 1, Kamla Devi and eye witness, P.W. 2 Sundari Devi establishe that there was common intention on the part of both of the appellants to commit murder of Pingla Devi. However, the same cannot be said as to attempt to commit murder of Kamla Devi as there was no instigation from Shivraj Singh to kill her. As such, learned trial court has rightly held Shivraj Singh guilty of offence only under Section 302 of the I.P.C. and Kushal Singh under Section 302 read with Section 34 as well on the charge under Section 307 of the I.P.C. The First Information Report is not an encyclopedia nor is it written by the person who was throughout eye witness. Since Kamla Devi (P.W. 1) was in injured condition, as such Rajpal Singh (P.W. 3), the neighbour lodged the same immediately after the incident. In our opinion, mere non-mention of role of Kushal Singh by the neighbour of the deceased does not create any reasonable doubt in the prosecution story.

10) Mr. B.B. Sharma, Amicus curiae, learned counsel for the appellants argued on behalf of the appellants that there was no mention of light in the First Information Report. From the statement of witnesses, it is clear on the record that there was electric light in the house. Appellants, deceased and injured all are relations living in one house, as such there is no difficulty in identifying the appellants at the time of scene of occurrence, nor is there any reason on record showing possibility of the outsider to come and commit the crime. The quarrel between appellants and Pingla Devi at 11:00 P.M. before the commission of murder at 1:30 A.M. (night) as stated by Sundari Devi (P.W. 2) cannot be ignored. In the aforesaid circumstances, we do not see any reason to disbelieve the evidence adduced by the prosecution witnesses merely on account of non-mention of light in the First Information Report.

11) Learned counsel for the appellants also contented that enmity is a double edged weapon, as such a false implication of the appellants cannot be ruled out. There is nothing on record which shows enmity of the appellants with the P.W. 3, Rajpal Singh, nor is there anything on the record to suggest any reason why P.W. 1, Kamla Devi (injured) would implicate the innocent persons as against the real culprits. As such, we see no force in the contention of the learned counsel for the appellants.

12) Referring to the report dated 20.07.2002 of the Chemical Examiner, on behalf of the appellants it is argued that it is not mentioned if the blood found on the sickle and on the clothes of the deceased belonged to one person. It is relevant to mention here on our part that it is not a case of circumstantial evidence but a case of direct evidence of eye witnesses. The Chemical Examiner’s report does corroborate the prosecution story to the extent that the human blood was found in the articles sent to

forensic laboratory relating to this crime. Only for the reason that the bloodstains could not be classified cannot be a ground to discard the natural oral evidence adduced by the eye witnesses.

13) In view of the above discussion, we are in agreement with the findings of the learned Sessions Judge that both the appellants are guilty of the offence punishable under Section 302 read with Section 34 of the Indian Penal Code and appellant Kushal Singh is further guilty of offence punishable under Section 307 of the Indian Penal Code, and the sentence passed against them. Accordingly, the appeal is liable to be dismissed and is accordingly dismissed.

(Prafulla C. Pant, J.) **(Irshad Hussain, J.)**

Dt. 29 March, 2005
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